IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 4523 of 2005**

Between:

Ganapuram Anil Kumar S/o. Sri Komaraiah
R/o./ H.No. 3-10-164, Reddy Colony, Second Lane, Kumar Pally, Hanmakonda, Warangal District.

**..... PETITIONER**

AND

1 The Commissioner, Employment and Training BRKR Bhavan, Tank Bund, Hyderabad.
2 D. Srinivas Reddy S/o. Not Known, Indurthy Village, Pothkapally Mandal, Karimnagar District.
3 A. Praveen Kumar S/o. NOt known R/o. H.No. 16-1-20, Railway Gate, Kareemabad Road, Warangl District.
4 A. Raghupathi S/o. Adi Reddy, Peddakodepaka Village, Parakal Mandal, Warangal District.
5 S. Murali Manohar Rao S/o. Not known, R/o. H.No. 322/1, Rudrampur, Kothagudem,. Khammam District.
6 G. Kanuka Raju S/o. Not known, R/o. H.No. 9-8-45, Barlipit, Kothagudem (P & M), Khammam District.
7 The Commissioner, Disabled Welfare & State Commissioner, Under persons with disabilities Act, 1995, 6th Floor, Chandra Vihar, Nampally, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or orders more particularly one in the nature of writ of Mandamus declaring the order dt. 18-2-2005 in case No. 104/2003 on the file of the Commissioner, Disabled Welfare and State Commissioner under Persons with Disability Act, 1995, i.e, the 7th Respondent herein as arbitrary, illegal and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MR.ANDAPALLI SANJEEV KUMAR**

**Counsel for the Respondent No.1: GP FOR LABOUR**

The Court, at the admission stage, made the following :

**THE HONOURABLE SRI JUSTICE K.C.BHANU**

**WRIT PETITION NO : 4523 of 2005**

**ORDER:**

This writ petition is made for the purpose of issuance of Mandamus to declare the order dated 18-02-2005 in Case No.104 of 2003, on the file of the 7th respondent-Commissioner, Disabled Welfare and State Commissioner under Persons With Disability Act, 1995 (for brevity 'the Act, 1995'), as arbitrary and illegal.

2. The factual background leading to the dispute,
*inter se,* between the parties is that:

The petitioner is Hearing Handicapped having more than 40% of disability and he was also operated twice as the hearing loss is increasing day by day. When the 1st respondent-Commissioner, Employment and Training, BRKR Bhavan, Hyderabad, inviting applications from the eligible candidates to fill up a vacancy in the cadre of Assistant Training Officer (Fitter) in Zone-V, which was reserved for Hearing Handicapped, the petitioner has applied for the post in the month of March, 2003. The candidates were subjected to attend written examination and also for practical/oral interview on 17-03-2003 and 18-03-2003 respectively. He fared well in the written test as well as oral interview. The said vacancy was

earmarked for Hearing Handicapped and in the event of non-availability of a candidate, the same will be filled up by Orthopedically Handicapped. He was only the person with Hearing Handicapped, who attended the written examination and interview.

3. After examination, he was directed to attend before the State Medical Board at Government E.N.T Hospital, Koti, Hyderabad (for brevity 'State Medical Board, Hyderabad') for verification of the genuinety of Deaf Certificate issued by the District Medical Board at Mahatma Gandhi Memorial Hospital, Warangal (for brevity 'District Medical Board, Warangal). The State Medical Board has examined him and after verification of genuinety, certified vide Certificate dated 01-04-2003, that the petitioner was having 46.2% disability as against the certification of 42% disability, issued by the District Medical Board, Warangal, vide Certificate dated 11-09-2002. The 1st respondent, after satisfying with his eligibility and after considering the certificate dated 01-04-2003 of the State Medical Board, was pleased to appoint him as an Assistant Training Officer (Fitter), by order dated 28-04-2003, and posted him to work at Government I.T.I, Kothagudem, Khammam District. Since then, he has been working as Assistant Training Officer (Fitter), without any blemish.

4. While the matter stood thus, the unofficial respondents

2 to 6 have filed a complaint dated 22-11-2003, before the 7th respondent, complaining that the petitioner has got employment by producing a fake Medical Certificate. The 7th respondent took up the matter and directed the petitioner to attend for the re-evaluation of Hearing Handicapped before the Ali Yavar Jung National Institute for the Hearing Handicapped of Government of India, Southern Regional Center, Secunderabad (for brevity 'AYJNIHH SRC). Accordingly, the petitioner appeard before the AYJNIHH SRC. The Assistant Director, AYJNIHH SRC, submitted a report on

27-07-2004, to the 7th respondent stating that the Audio Gram Chart levels are 40-50 dB in both the ears.

5. Based on the above reports, the 7th respondent by impugned order dated 18-02-2005, directing the 1st respondent to disqualify the petitioner from the service and take immediate further action for filling up of the post of Assistant

Training Officer, following the provisions of the Act, 1995. The said impugned order is challenged before this Court on the ground that as per the G.O.Ms.No.56, dated

02-12-2002, the 7th respondent ought not to have disqualified the petitioner and ought to have seen that the petitioner is having more than 40% disability. Though the respondents

2 to 6 who are claimed to be the Orthopedical Handicapped, made a false complaint against the petitioner in order to disqualify the petitioner and to get the employment, the 7th respondent has acted in excess of his jurisdiction vested in him and hence, the present writ petition.

6. The 1st respondent filed a counter-affidavit stating that one back-log vacancy of Assistant Training Officer (Fitter), at Government I.T.I, Kothagudem, reserved for Physically Handicapped candidate in Zone-V, was notified in the year August, 2002, and to that effect, he sought clarification from the Government. The committee has agreed with the proposals of the Director, Employment and Training, for interchanging the category of Visually Handicapped, for the posts of Assistant Training Officers, available in the department, with a condition that preference should be given to the Hearing Handicapped category. If the candidates of this category are not available, then Orthopedically Handicapped candidates should be considered. However, it is made clear that the post would be filled up with the disabled person only.

7. Based on the documentary evidence produced by the petitioner and also report submitted by the State Medical Board, Hyderabad, the petitioner was selected as Assistant Training Officer (Fitter) in reserved Physically Handicapped (deaf) vacancy out of the PH candidates (ortho and deaf), who appeared for interview and test. The petitioner secured 33.8 marks and accordingly, he has been appointed as Assistant Training Officer (Fitter) and posted at Government I.T.I., Kothagudem.

8. One D.Srinivasa Reddy who is an Orthopedically Handicapped, through his petition dated 23-08-2004, lodged a complaint, alleging that the petitioner was selected and appointed in the vacancy by furnishing bogus Physically Handicapped (deaf) Certificate and his appointment is irregular. Based on the same, the petitioner was sent to State Medical Board, Hyderabad, for

conducting thorough Medical Examination, through the Director, Medical Education, Hyderabad. The Superintendent, State Medical Board, Hyderabad, by his report dated 02-03-2005, informed that the petitioner has mild to moderate hearing loss with well developed speech and he does not come under P.H.Category as mentioned in the Certificate, vide their D.O.letter No.Peshi/10/2005, dated 02-03-2005. While so, the 7th respondent passed the impugned judgment on 18-02-2005, directing the 1st respondent to disqualify the petitioner from service and take immediate action for filling up of the post of Assistant Training Officer as per the provisions of the Act, 1995 and G.O.Ms.No.56, dated 02-12-2002. Accordinlgy, as per the said judgment, the 1st respondent removed the petitioner from service vide CE & T Proceedings No.M2/Vig/HZ/13477/04, dated 17-03-2005. It is further submitted that since the matter pertains to the service conditions of the State Government employee, this Court has no jurisdiction. The petitioner has to approach the Administrative Tribunal for redressal of his grievance.

9. The learned counsel for the petitioner would vehemently contend that the post is earmarked for physically handicapped in hearing. The Medical Certificate issued by the District Medical Board, Warangal, would clearly reveal that the petitioner was suffering with disability of 42% and also the State Medical Board, Hyderabad, also assessed the percentage of disability at 46.2% and therefore, since the petitioner is having more than 40% disability in hearing, he is a disabled person, and since no other physically handicapped person (hearing disability) was qualified, the petitioner was rightly selected. He further, contended that simply because the petitioner (categorized as moderate) was considered as Moderate Hearing impaired, still he would be more than 42% disability which is a disability within the meaning of the Act, 1995. Continuing to argue, the learned counsel would point out that the order passed by the 7th respondent relates to recruitment. Therefore, this Court has jurisdiction to entertain the writ petition in the matter of recruitment process for sanction of physically handicapped person and hence, he prays to set aside the impugned proceedings.

10. On the other hand, the learned counsel for the 1st respondent strenuously

contended that as per the Report, dated 02-03-2005, issued by the Superintendent, State Medical Board, Hyderabad, along with the Certificate, dated
01-04-2003, the petitioner does not come under the Physically Handicapped category. Since, the matter pertains to service conditions of State Government employee, this Court has no jurisdiction, and the petitioner has to approach the AP Administrative Tribunal, Hyderabad, for redressal of his grievance and hence, he would ultimately pray to dismiss the writ petition.

11. As per Section 2(l) of the Act, 1995, “Hearing Impairment” means loss of sixty decibels or more in the better ear in the conversational range of frequencies:

| S.No. | Cate-gory | Type of Impairment | DB leverAnd/or | Speech discrimination | Percentage of impairment |
|---|---|---|---|---|---|
| 1. | I | Mild hearing impairment | dB 26 to 40dB in betterear | 80 to 100% inbetter ear | Less than 40% |
| 2. | II | Moderate hearingimpairment | dB 41 to 55dB in betterear | 50 to 80% inbetter ear | 40 – 50% |
| 3. | III | Severe hearingImpairment | 56 to 70 dB Hearing impairmentIn better ear | 40 to 50% | 50 – 75% |

12. When the petitioner was referred to the Medical Board, the Medical Authority opined that as per the Act, 1995, ‘person with disability’ means the person suffering from disability with not less than 40% of disability. When the petitioner was examined by the District Medical Board, Warangal, the petitioner was having conversational range of frequencies to both the ears at 53 dB and accorded percentage of disability as 42% and when he was examined by the State Medical Board, Hyderabad, the Audiological findings are; Pure Tone threshold of hearing in Conversational Frequencies to the Rt. Ear at 53 dB, and to the Lt. Ear at 61 dB, and accorded percentage of Disability as 46.2%.

13. When the unofficial respondents made a complaint, dated 22-11-2003, before the 7the respondent, he issued notice, dated 26-07-2004, to the petitioner to attend for the reevaluation of his hearing handicapped, before the

Assistant Director, AYJNI SEC. At that time, he did not attend the said examination. Again a notice was issued to him on 06-08-2004, for which also the petitioner did not respond. Thereafter, a final notice was sent through the proper authority with a direction to the petitioner to appear for the assessment immediately. Thereafter, the petitioner, attended the Hearing Evaluation in AYJNIHH SRC on 24-08-2004 and then the Assistant Director, AYJNIHH SRC, furnished his report and in the Audiogram Chart, it was written as 'ESTIMATED THRESHOLD
40-50 dB in both ears.'

14. After going through the entire record, the 7th respondent came to the conclusion that the petitioner was categorized under Moderate category and eligible for Hearing aid at free of cost or concessional rates only and therefore, held that the petitioner was not eligible for employment as per the Medical Certificate produced by him. Even the Certificate issued by the District Medical Board, Warangal, dated 11-09-2002, would indicate that the petitioner belongs to the category II of moderate disability. The State Medical Board, Hyderabad, certified that the petitioner belongs to the category-II of moderate hearing disability. The opinion sought for by the Director of Disabled Welfare, Hyderabad from the Superintendent, State Medical Board, Hyderabad, is that the petitioner has mild to moderate hearing loss with well developed speech and he does not come under Physically Handicapped Category as mentioned in the Certificate vide letter dated 02-03-2005. Based on the same, the 7th respondent passed the impugned order.

15. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for both the parties, at the out set, it is relevant to focus attention on the moot question that arises for determination in this case is as to whether the case is to be decided by the Administrative Tribunal.

16. The rule of writ jurisdiction by availability of an alternative remedy is rule of discretion and not one of compulsion in appropriate case in spite of availability of alternative remedy from the High Court still exercise its writ jurisdiction in at least three contingencies as follows:

1. Whether the writ petition seeks enforcement of any of the

fundamental rights.

2. Where there is a failure of principles of natural justice.

3. Where the orders or proceedings are only without jurisdiction or the virus of the Act is challenged.

17. This is not a case where the petitioner is seeking enforcement of any fundamental rights. So, it is also not a case where the principles of natural justice have been violated, because as seen from the impugned order, it is clear that an opportunity was given to the parties during the hearing of matter before passing the impugned order.

No-where it is stated in the affidavit that the principles of natural justice have been violated. What all the petition contained is that as per G.O.NO.56, dated 02-12-2002, the required disability is only 40% and the 7th respondent acted excess of its jurisdiction vested on him. So, also it is not a case where the orders passed by the 7th respondent are only without jurisdiction. Therefore, the issue relates to the question as to whether disability suffered by the petitioner comes within the meaning of Section 2(l) of the Act, 1995, so as to seek employment under the category of physically handicapped person, is required to be decided by the State Administrative Tribunal which is having jurisdiction to determine and decide the issue.

18. Under Section 15 (1) of the Administrative Tribunal Act, 1985, reads as follows:

> "**Section 15. Jurisdiction, powers and authority of State Administrative Tribunals:-** (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court…..) in relation to-
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> (a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;
>
> (b) all service matters concerning a person (not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14) appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State

or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment."

19. A perusal of the aforesaid provision makes it abundantly clear that the Tribunal, constituted under the State Act, has jurisdictional powers and authority to decide the matters concerning recruitment, to any civil service of the State or to any civil post under the State.

20. In this case, the petitioner is challenging the order, dated 18-02-2003, in Case No.104 of 2003, on the file of 7th respondent, wherein it was held that the recruitment of the petitioner itself is not in accordance with law and therefore, the petitioner is not eligible for appointment as per the Medical Certificate, produced by him and, hence, the 7th respondent directed the 1st respondent-Commissioner of employment and Training-cum-appointing authority, Hyderabad, to disqualify the petitioner from the post of Assistant Training Officer.

21. Thus, taking into totality of the matter, I am of the view that the matter squarely comes under the Administrative Tribunals Act, 1985. Accordingly, the writ petition stands disposed of in terms above said, with a direction to the petitioner to avail alternative remedy. Under the circumstances, no costs.

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April 28, 2005

Kvr

To

1 The Commissioner, Employment and Training BRKR Bhavan, Tank Bund, Hyderabad.
2 The Commissioner, Disabled Welfare & State Commissioner, Under persons with disabilities Act, 1995, 6th Floor, Chandra Vihar, Nampally, Hyderabad.

3 The GP for Labour, High Court of AP Buildings, High Court of

AP, Hyderabad. (O.U.T.)

4 2 C.D copies.